

## REMARKS

### 35 U.S.C. § 101 Rejections

The Examiner has rejected claims 1-9 and 11-26 under 35 U.S.C. § 101 because the claims are directed to a non-statutory subject matter, specifically directed toward a data structure.

The Examiner makes reference to a number of references that date back to the 1970's. The Examiner is now referred to the decision of *State Street Bank & Trust Co. v. Signature Financial Group* (149 F.3d 1368 Fed. Cir. Jul. 23, 1998), wherein it was decided that a "business method" is patentable.

The Examiner then proceeds to state as follows:

*Abstract ideas not claimed as embodied in the computer-readable media are descriptive material per se and are not statutory because they are neither physical "things" nor statutory processes. Applicant's claims are not within any of the statutory classes. The amended claim 1 recites "a method for assisting a user in selecting one or[e] more items .....", which presents an "abstract idea" which does not necessarily require a technology. A claim must not be directed merely to an abstract idea, but must instead be tied to a technological art, environment, or machine, which would result in a practical application producing a concrete, useful and tangible result. The use of computer-implemented method has not been indicated.*

Applicant does not agree with the Examiner's assertion in this regard, because of the decision in *State Street Bank*. Be that as it may, Applicant has amended the independent claims so that the invention as claimed is for a "computer-implemented method."

Applicant believes that the amended claims do overcome the Examiner's rejections under this heading. Applicant, accordingly, respectfully requests

withdrawal of the rejections of claims 1-9 and 11-26 under 35 U.S.C. § 101.

Allowable Subject Matter

The Examiner's indication that claims 1-9 and 11-26 would be allowable if rewritten or amended to overcome the rejections under 35 U.S.C. § 101 is noted with appreciation.

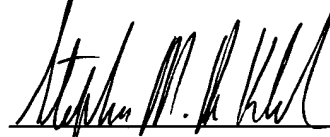
Applicant respectfully submits that the present application is in condition for allowance. If the Examiner believes a telephone conference would expedite or assist in the allowance of the present application, the Examiner is invited to call Stephen M. De Klerk at (408) 720-8300.

Please charge any shortages and credit any overages to Deposit Account No. 02-2666. Any necessary extension of time for response not already requested is hereby requested. Please charge any corresponding fee to Deposit Account No. 02-2666.

Respectfully submitted,

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